

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CAMILLE SHOCAIR,

Plaintiff,

vs.

CIVIL ACTION NO. 07-13595

DISTRICT JUDGE DAVID LAWSON
MAGISTRATE JUDGE DONALD A. SCHEER

ANTHONY SCOTT,

Defendant,

_____ /

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

RECOMMENDATION: Defendant's Motion to Dismiss for lack of subject matter jurisdiction should be GRANTED, as no federal question was pled and diversity jurisdiction does not exist.

* * *

Plaintiff was allowed to proceed *in forma pauperis*, and filed the instant Complaint on August 27, 2007, against her employer's supervisor. Plaintiff, a current employee with Awrey Bakery of Livonia, Michigan, filed a union grievance on August 3, 2007, alleging that the Defendant transferred her out of the sanitation department of the bakery after she complained about a face injury she suffered at work. Under the terms of the applicable collective bargaining agreement, the grievance procedure includes mandatory arbitration. Nevertheless, when the union grievance was denied, Plaintiff filed the instant action seeking a return to her previous job in the sanitation department.

Defendants filed a Motion to Dismiss on December 3, 2007, based upon a lack of subject matter jurisdiction and a failure to state a claim upon which relief can be granted.

In a handwritten response to Defendant's Motion to Dismiss, dated December 14, 2007, Plaintiff reiterated that she was transferred from the sanitation department of the bakery after she complained about a work-related injury.

The allegations of the Complaint do not provide a basis for federal subject matter jurisdiction. Pursuant to 28 U.S.C. § 1331, federal district courts have "original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States." Plaintiff, however, has not asserted any claim under the Constitution or laws of the United States.

Similarly, the Complaint does not establish diversity jurisdiction, pursuant to 28 U.S.C. § 1332, as both parties are residents of the State of Michigan. Furthermore, Plaintiff has not established that the matter of controversy exceeds the sum of \$ 75,000. In fact, Plaintiff states that she seeks the return of her job, and makes no claim for damages.

Even construing the facts in the light most favorable to Plaintiff, she has failed to state a claim upon which relief can be granted. Plaintiff alleges that, after she complained of a work related injury, Defendant had her removed from her job in the sanitation department of the bakery. Mere inconvenience, or an alternation of job responsibilities, is not a materially adverse change in conditions of employment. Hollins v. Atlantic Co., 188 F.3d 652, 662 (6th Cir. 1999). Plaintiff does not allege that the Defendant took any discriminatory or retaliatory actions based on her gender, race, age or any other protected activity. Since Plaintiff has not alleged that Defendant engaged in unlawful activity, she has failed to state a claim for which relief can be granted. Accordingly, Defendant's Motion to Dismiss should be granted, and the Complaint dismissed with prejudice.

The parties are advised that any objections to this Report and Recommendation must be filed with the Court within ten (10) days after they are served with a copy, or further appeal from Judge Lawson's acceptance thereof is waived.

s/Donald A. Scheer
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

DATED: March 4, 2008

CERTIFICATE OF SERVICE

I hereby certify on March 4, 2008 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on March 4, 2008. **Camille Schocair.**

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217